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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,222	03/16/2004	Robert A. Koch	BS00097CIP2	2036

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12/21/2006

EXAMINER

GAUTHIER, GERALD

ART UNIT

PAPER NUMBER

2614

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/21/2006	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/801,222

Applicant(s)

KOCH, ROBERT A.

Examiner

Gerald Gauthier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**Claim(s) 21** is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. A computer program product does not fall within at least one of the four categories of patent eligible subject matter recited in 35 U.S.C. 101 (process, machine, manufacture, or composition of matter).

The claimed invention is directed to a judicial exception to 35 U.S.C. 101 (i.e., an abstract idea, natural phenomenon, or law of nature) and is not directed to a practical application of such judicial exception (e.g., because the claim does not require any physical transformation and the invention as claimed does not produce a useful, concrete, and tangible result).

See the following link:

<http://www.uspto.gov/web/offices/com/sol/og/2005/week47/patgupa.htm>

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. **Claim(s) 1-21** are rejected under 35 U.S.C. 102(e) as being anticipated by

Brisebois et al. (US 6,310,944 B1)

Regarding **claim(s) 1**, Brisebois discloses a method of providing communications services (FIG. 1 and column 1, lines 39-42), comprising:

allowing a subscriber to create a data message (column 6, lines 11-22) [The subscriber creates a special message for a calling party];

allowing the subscriber to associate the data message to an originating party and to a recipient (column 6, lines 11-22) [The subscriber creates a special disposition based on the caller identity];

receiving a communication from the originating party (column 7, lines 21-34) [The calling party called the system]; and

communicating the data message to the recipient via an Internet Protocol communications network (column 5, lines 4-12) [The called party using the internet will receive the message via an Internet Protocol].

Regarding **claim(s) 2 and 15**, Brisebois discloses a method, wherein receiving the communication comprises receiving a telephone call intended to terminate at a telephone number associated with the subscriber (column 7, lines 21-34).

Regarding **claim(s) 3 and 16**, Brisebois discloses a method, wherein receiving the communication comprising receiving an electronic communication addressed to the subscriber (column 7, lines 21-34).

Regarding **claim(s) 4**, Brisebois discloses a method, wherein allowing the subscriber to create the data message comprises allowing the subscriber to create an audio message (column 6, lines 11-22).

Regarding **claim(s) 5**, Brisebois discloses a method, wherein allowing the subscriber to create the data message comprising allowing the subscriber to access a user interface via an Internet Protocol communications network, the user interface prompting the subscriber to create the data message and to associate the data message to a recipient (column 6, lines 11-22).

Regarding **claim(s) 6**, Brisebois discloses a method, wherein allowing the subscriber to create the data message comprising allowing the subscriber to specify a time of day that the data message is communicated to the recipient (column 6, lines 11-22).

Regarding **claim(s) 7 and 17**, Brisebois discloses a method, further comprising allowing the subscriber to preview the data message (column 6, lines 11-22).

Regarding **claim(s) 8**, Brisebois discloses a method, further comprising allowing the subscriber to audibly preview the data message (column 6, lines 11-22).

Regarding **claim(s) 9**, Brisebois discloses a method, further comprising allowing the subscriber to visually preview the data message (column 6, lines 11-22).

Regarding **claim(s) 10 and 18**, Brisebois discloses a method, further comprising allowing the subscriber to attach a computer file to the data message (column 6, lines 11-22).

Regarding **claim(s) 11 and 19**, Brisebois discloses a method, wherein allowing the subscriber to create the data message comprises allowing the subscriber to record audio content (column 6, lines 11-22).

Regarding **claim(s) 12**, Brisebois discloses a method, wherein allowing the subscriber to create the data message comprises allowing the subscriber to input text (column 6, lines 11-22).

Regarding **claim(s) 13**, Brisebois discloses a method, further comprising accepting voice commands from the subscriber when creating the data message (column 6, lines 11-22).

Regarding **claim(s) 14**, Brisebois discloses a method of providing communications services (FIG. 1 and column 1, lines 39-42), comprising:

storing a user interface in memory, the user interface allowing a first party to compose a data message and to associate that data message with a second party and with a third party (column 6, lines 11-22) [The subscriber creates a special message for a calling party];

receiving a communication from the second party (column 7, lines 21-34) [The calling party called the system]; and

communicating the data message to the third party (column 7, lines 21-34) [The system will send a message to the called party].

Regarding **claim(s) 20**, Brisebois discloses a system (FIG. 1 and column 1, lines 39-42), comprising:

a Communications Module stored in a memory device, and a processor communicating with the memory device (column 6, lines 11-22) [The subscriber creates a special message for a calling party];

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the Communications Module allowing a first party to compose a data message and to associate that data message with a second party and with a third party, and when a communication from the second party is received, the Communications Module initiates communication of the data message to the third party (column 7, lines 21-34) [The system will send a message to the called party].

### ***Response to Arguments***

4. Applicant's arguments filed October 24, 2006 have been fully considered but they are not persuasive. The examiner does not see any distinctions between the originator and the subscriber or the first or the second party. They are not having different function in the claims. Therefore the rejection using Brisebois prior still stand.

### ***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).




A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gerald Gauthier whose telephone number is (571) 272-7539. The examiner can normally be reached on 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fan Tsang can be reached on (571) 272-7547. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Gerald Gauthier  
Primary Examiner  
Art Unit 2614

GG  
December 18, 2006